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The Tulving Company, Inc.

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**SANTA ANA DIVISION**

In re:

THE TULVING COMPANY, INC., a  
California corporation,

Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**NOTICE OF MOTION AND MOTION  
FOR ORDER (I) APPROVING COIN  
VALUATIONS AND DISTRIBUTION  
SCHEDULE OF ERROR COINS TO  
VICTIM/ CREDITORS, AND (II)  
GRANTING RELATED RELIEF  
PURSUANT TO SECTIONS 105 AND 363  
OF THE BANKRUPTCY CODE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATIONS OF WENETA M.A.  
KOSMALA AND DAVID JUDD IN  
SUPPORT THEREOF**

Hearing:

Date: July 13, 2017  
Time: 10:30 a.m.  
Place: 411 West Fourth Street  
Courtroom 5A  
Santa Ana, CA 92701

**TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE, THE  
OFFICE OF THE UNITED STATES TRUSTEE, ALL CREDITORS, PARTIES THAT  
HAVE FILED REQUESTS FOR SPECIAL NOTICE, AND OTHER INTERESTED  
PARTIES:**

1           **PLEASE TAKE NOTICE** that on **July 13, 2017, at 10:30 a.m.**, or as soon thereafter as  
2 counsel may be heard, a hearing will be held (the “Hearing”) upon the motion (“Motion”) of Weneta  
3 M.A. Kosmala, the duly appointed chapter 7 trustee (the “Trustee”) for The Tulving Company, Inc.  
4 (the “Debtor”), in the above-entitled chapter 7 case (the “Bankruptcy Case”), pursuant to sections  
5 105 and 363 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”),  
6 seeking: (1) approval of the valuations of certain coins, consisting of 13,850 Presidential Error-  
7 Missing Edge Letter Coins and 1,730 Double Edge Coins (collectively, the “Error Coins”)  
8 determined by Professional Coin Grading Service (“PCGS”), in the amounts listed on **Exhibit “A”**  
9 hereto; (2) approval of the Trustee’s proposed allocation of specific Error Coins to each of the  
10 creditors of this estate who are victims of the Debtor’s fraud (the “Victim/Creditors”) on account of  
11 their claims, as set forth on the distribution schedule (the “Distribution Schedule”) attached hereto as  
12 **Exhibit “B”**; (3) establishing **July 3, 2017** as the new deadline (the “Opt-Out Deadline”) for  
13 Victim/Creditors to determine whether or not to accept the Error Coins as a distribution from the  
14 Estate on account of their claims; (4) determining that any Victim/Creditors who have not sent back  
15 an “Opt-Out Notice” (in the form appended hereto as **Exhibit “C”**) by the Opt-Out Deadline are by  
16 default deemed by the Court to have “opted-in” to receive Error Coins in accordance with the  
17 Distribution Schedule; (5) determining that the distribution of Error Coins to Victim/Creditors be  
18 treated as a distribution of cash to such creditors, of an amount equal to the value of their allocated  
19 Error Coins in accordance with the valuations listed on **Exhibit “A”** hereto; (6) approving payment  
20 to Great Collections of its shipment costs in accordance with the *Order Authorizing the Trustee to (I)*  
21 *Retain GreatCollections.com d/b/a Great Collections as Auctioneer, (II) Modify, in Part, Asset*  
22 *Distribution Plan, and (III) Set New Opt-Out Deadline for Creditors to Determine Whether to*  
23 *Receive Error Coins in Partial Payment of Their Claims and Sell Coins Not Distributed to Creditors*  
24 *Free and Clear of Liens, Claims and Interests* entered October 12, 2016 [Docket 634] (the  
25 “Distribution Modification Order”) <sup>1</sup>; and (7) granting related relief.

26  
27 <sup>T</sup> The Distribution Modification Order approved the setting of a new opt-out deadline which will be 30-days after the  
28 filing of this Motion, and authorized the retention of Great Collections to value, ship and auction Error Coins on the  
terms set forth therein. This Motion seeks approval of the Distribution Schedule, the opt-in / opt-out procedure to be  
implemented in accordance with the Distribution Modification Order and the payment of shipping costs in accordance  
with the terms of Great Collection’s retention by the Estate.

**PLEASE TAKE FURTHER NOTICE** that to address confidentiality concerns, the names of Victim/Creditors are not set forth on the Distribution Schedule appended to the Motion, which lists claims numerically by dollar amount only. Pursuant to Order of the Court<sup>2</sup>, the Trustee obtained authorization to file pleadings containing customer information under seal. Therefore, the full Distribution Schedule (and any supplements and amendments thereto) listing each Victim/Creditor, their address, their claim amount and the specific Error Coin(s) proposed to be delivered to such Victim/Creditor is being filed with the Court under seal. After the Opt-Out Deadline and prior to the hearing on the Motion, the Trustee will file under seal a supplemental Distribution Schedule identifying the Victim/Creditors who have made a timely determination to opt-out. After the hearing on the Motion, the Trustee will file under seal a final Distribution Schedule identifying any additions or revisions to the supplemental Distribution Schedule either authorized by the Trustee, in her discretion, or as may be ordered by the Court at the hearing on the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Trustee's professionals have prepared a separate personalized distribution schedule for each individual Victim/Creditor that specifically lists the Error Coin(s) to be distributed to such Victim/Creditor (each, an "Individual Error Coin Notice"). At the bottom of the Individual Error Coin Notice is the "Opt-Out Notice", to be filled out by Victim/Creditors indicating (i) whether they wish to receive their allocated Error Coins, and (ii) any change of address information. The Trustee will serve a copy of this Notice of Motion and Motion, and an Individual Error Coin Notice (containing the Opt-Out Notice) to each Victim/Creditor. To facilitate the return of the Opt-Out Notices prior to the Opt-Out Deadline, the Trustee will also enclose a stamped self-addressed return envelope for the mailing by Victim/Creditors of the Opt-Out Notices to the Trustee's professionals. Other parties in interest will receive a copy of this notice of Motion and Motion only.

**PLEASE TAKE FURTHER NOTICE** that the form of Distribution Schedule filed with the Court and appearing on the Court docket lists each specific Error Coin to be distributed to each individual Victim/Creditor (without personally identifying information). The Distribution Schedule

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<sup>2</sup> See *Order Authorizing Trustee to File Customer Lists Under Seal* [Dkt. No. 169] entered September 12, 2014.

1 is 378 pages long. In the interests of economy, a summary form of Distribution Schedule (11 pages  
2 long) is being served upon creditors and parties in interest along with the Motion. Any creditor or  
3 party in interest may view the full Distribution Schedule (redacted of personally identifiable  
4 information) on the Court's Docket or on the informational website maintained by the Trustee at  
5 tulvingbankruptcy.com. In addition, copies of the full Distribution Schedule (without personally  
6 identifying information) can be obtained by contacting the office of counsel for the Trustee, whose  
7 contact information is on the first page of this notice.

8 **PLEASE TAKE FURTHER NOTICE** that the relief sought herein is in furtherance of,  
9 *inter alia*: (1) the *Coordination Agreement for Distribution of Seized Items from United States to*  
10 *Bankruptcy Trustee and from Trustee to Victims* (the "Coordination Agreement") by and among the  
11 Trustee, the Debtor, Hannes Tulving, Jr. and the Government, which was approved by Order of this  
12 Court dated July 22, 2015 [Docket No. 264] (the "Coordination Order"); (2) the *Order (I)*  
13 *Authorizing Implementation of Trustee's Proposed Plan for Liquidation of Seized Items and*  
14 *Disbursement of Assets to Victim/Creditors of Fraud in the Bankruptcy Case in Accordance with*  
15 *Coordination Agreement with United States Government, and (II) Granting Related Relief Pursuant*  
16 *to Sections 105 and 363 of the Bankruptcy Code* [Docket No. 494] entered January 28, 2016 (the  
17 "Distribution Order"); and (3) the Distribution Modification Order, as described more fully in the  
18 Memorandum below.

19 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the **Distribution Modification**  
20 **Order** previously entered by this Court, if you determine to "opt out" and not receive the  
21 **Error Coin** distribution described on the Distribution Schedule and set forth on the **Individual**  
22 **Error Coin Notice**, you must return the enclosed **Opt-Out Notice**, in the manner stated in the  
23 **Opt-Out Notice**, so that it is received no later than July 3, 2017, the **Opt-Out Deadline**. If you  
24 do not timely return the **Opt-Out Notice**, the Trustee will seek a determination that you have  
25 affirmatively "opted-in" to receive the Error Coins allocated to you.

26 **PLEASE TAKE FURTHER NOTICE** that if you choose to opt out of receiving **Error**  
27 **Coins**, the Trustee will sell the Error Coins that were otherwise distributable to you through  
28 an auction. The auction proceeds will be used to pay claims and expenses of this bankruptcy

1 case in accordance with the priorities established by the Bankruptcy Code. Therefore, if you  
2 "opt-out" of receiving Error Coins, it is very possible that you will receive no distribution from  
3 the Debtor's Estate on account of your claim(s).

4 PLEASE TAKE FURTHER NOTICE that the Motion is based on this Notice and Motion,  
5 the accompanying Memorandum of Points and Authorities, the Declarations of Weneta M.A.  
6 Kosmala and David Judd that are attached to the Motion, and any other admissible evidence properly  
7 brought before the Court.

8 PLEASE TAKE FURTHER NOTICE that Local Bankruptcy Rule 9013-1(f) requires that  
9 any response to the Motion be filed with the Bankruptcy Court and served upon Trustee's counsel at  
10 the address appearing on the upper-left hand corner of the caption page to this Motion and the Office  
11 of the U.S. Trustee no later than fourteen (14) days prior to the Hearing hereon. The response must  
12 be a complete written statement of all reasons in opposition to or in support of the Motion and  
13 include declarations, documents and any responding memorandum of points and authorities.  
14 Pursuant to Local Bankruptcy Rule 9013-1(h), the failure to timely file and serve written opposition  
15 may be deemed by the Court to be consent to the granting of the relief requested in the Motion.

16 WHEREFORE, The Trustee respectfully requests that the Court approve the Motion and  
17 grant such other relief as is just and proper under the circumstances.

18  
19 Dated: June 1, 2017

PACHULSKI STANG ZIEHL & JONES LLP

20 By /s/ Linda F. Cantor  
21 Linda F. Cantor

22 Counsel for Weneta Kosmala, Chapter 7  
23 Trustee  
24  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

**A. The Background of the Debtor's Business**

The Tulving Company, Inc. ("Debtor") is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins and other precious metals through its internet website or by phone. Prior to the filing of the bankruptcy, customer complaints concerning delayed or undelivered orders were increasingly made to the Better Business Bureau against the Debtor and in early March, 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving, Jr., the Debtor's sole shareholder and principal ("Hannes Tulving") in the United States District Court, Northern District of California. A criminal investigation of the Debtor and Tulving by the Government was also being pursued, as described below. The Debtor ceased operations on or about March 3, 2014.

**B. Procedural Background of the Bankruptcy Case**

The Debtor commenced this case (the "Bankruptcy Case") by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. In light of the pending criminal investigation and other ongoing litigation against the Debtor, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15] (the "Stipulation"), which was signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee, appointing R. Todd Neilson as Trustee of the Debtor's estate* [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 and R. Todd Neilson was appointed to serve as the chapter 7 Trustee [Docket 108]. On March 22, 2016, Mr. Neilson filed his Withdrawal of Trustee [Docket 564]. The UST filed its *Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Trustee* dated April 1, 2016 [Docket 566], appointing Weneta M. A. Kosmala as the successor chapter 7 trustee of the Debtor's estate.

**C. The Criminal Case**

On March 8, 2014, Special Agents of the United States Secret Service executed a Search Warrant on the Debtor's offices on probable cause that the Debtor and Hannes Tulving were engaged in fraud. The Search Warrant resulted in the seizure of the Debtor's property including rare coins and other valuable items. Criminal proceedings (the "Criminal Case") against the Debtor and Hannes Tulving (collectively, "Defendants") ensued before the United States District Court for the Western District of North Carolina (the "District Court").

Hannes Tulving entered into a Plea Agreement with the United States of America, by and through the Acting United States Attorney for the Western District of North Carolina (the "Government") in the Criminal Case. Pursuant to order of this Court entered July 22, 2015 [Docket No. 264] (the "Coordination Order"), Hannes Tulving was authorized to sign the Plea Agreement on behalf of the Debtor in the Criminal Case. Under the Plea Agreement, the Defendants each plead guilty to 18 U.S.C. § 1343 wire fraud charge as set forth in Count One of a Bill of Information in the Criminal Case and, among other things, agreed to pay restitution to the victims of fraud. The Coordination Order authorized Hannes Tulving to sign on behalf of the Debtor a "*Coordination Agreement for Disbursement of Seized Items from United States to Bankruptcy Trustee and from Trustee to Victims*" (the "Coordination Agreement"). The Coordination Agreement also provided a framework for the administration by the Bankruptcy estate of the coins that had been seized by the Government. It required that the Trustee make a proposal for the disposition of the seized assets to Victim/Creditors which was acceptable to the Government and approved by the Bankruptcy Court and the District Court in the Criminal Case.

**D. The Disposition Plan**

As required by the Coordination Agreement, the Trustee made a proposal (the "Disposition Plan") for the disposition of the approximately 189,000 valuable coins (collectively, the "Seized Coins") that had been seized from the Debtor by the Government. The Disposition Plan was based upon the Debtor's inventory and valuation of the Seized Coins. Under the Disposition Plan, approximately 176,477 of the Seized Coins (the "Non-Error Coins"), believed to have a liquidation value in the range of \$400,000 - \$500,000, were to be sold at auction. Other Seized Coins,



consisting of approximately 12,539 Presidential Error-Missing Edge Letter Coins, had been ascribed a value of \$7,367,235 by the Debtor's coin expert, Miles Standish. However, the Trustee was advised that an immediate sale of such a large number of Presidential Error-Missing Edge Letter Coins and other Double Edge Coins (collectively, the "Error Coins") would flood the market and greatly reduce their value. The Disposition Plan therefore provided for the Error Coins to be distributed directly to Victim/Creditors on a pro rata basis, in partial satisfaction of their claims. Any Victim/Creditors could decide to "opt-out" of receiving Error Coins and the coins otherwise distributable to them (the "Rejected Coins") would be sold at a later auction.

The Disposition Plan was accepted by the Government, approved by Order of the Bankruptcy Court dated January 28, 2016 [Dkt. No. 494]<sup>1</sup> and approved by the District Court. Thereafter, Victim/Creditors were provided an opportunity to opt-out of receiving their allocated share of Error Coins. Thirty (30) of the Victim/Creditors advised the Trustee's professionals of their determination to opt-out of receiving Error Coins.

Thereafter, in accordance with the Disposition Plan and orders of the bankruptcy court, the Seized Coins were transferred from the federal depository in Wilmington, Delaware, to Heritage Auctioneers ("Heritage") in Dallas, Texas, and the Non-Error Coins were sold at auction on June 10, 2016. Consistent with estimates; the net proceeds of sale of the Non-Error Coins amounted to \$385,314.<sup>2</sup> (These amounts will be distributed pursuant to the priorities established by the Bankruptcy Code and in accordance with the Disposition Plan.) However, it was the opinion of Heritage that the Error Coins released by the Government and in its possession had an aggregate value of approximately \$500,000, and not \$7,367,235, as reported by the Debtor's coin expert.

#### **E. The Distribution Modification Order**

The Trustee was unable to substantiate the vastly discrepant values allocated to the Error Coins by the Debtor's coin expert, Miles Standish, and by Heritage. (While Mr. Standish purportedly graded 12,539 Presidential Error-Missing Edge Letter Coins, only 2,800 of those coins

<sup>1</sup> Order (I) Authorizing Implementation of Trustee's Proposed Plan for Liquidation of Seized Items and Disbursement of Assets to Victim/Creditors of Fraud in the Bankruptcy Case in Accordance with Coordination Agreement with United States Government, and (II) Granting Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code [Dkt. No. 494] entered January 28, 2106

<sup>2</sup> See Submission of Report of Auctioneer and Auction Expenses [Dkt. No. 600].

1 were separately marked; the remaining coins were comingled after their review so that their  
2 individual values could not be determined. Mr. Standish refused to re-value the Error Coins.  
3 Heritage proposed to grade and value the Error Coins but at a price of \$250,000, which was cost  
4 prohibitive.) Without individual values for the coins, there was no mechanism for the Trustee to  
5 prepare a ratable allocation of the Error Coins on account of individual Victim/Creditor claims.  
6 Under the circumstances, the Disposition Plan with respect to the distribution of Error Coins being  
7 held by Heritage could not be implemented.

8 After conferring with other coin experts, the Trustee determined to engage  
9 GreatCollections.com d/b/a Great Collections ("Great Collections") to have the Error Coins  
10 individually graded and encapsulated through Professional Coin Grading Service ("PCGS"), a  
11 national coin grading service utilized by Great Collections in the ordinary course of business. In  
12 addition to the provision of grading services by PCGS at a discounted rate, Great Collections also  
13 agreed to transport the Error Coins from Dallas, Texas to Irvine, California, inventory the coins and  
14 ship the graded coins to Victim/Creditors at a total cost between \$110,250 and \$120,250, and auction  
15 coins not otherwise distributed.

16 The Trustee filed a motion on September 1, 2016, requesting authority to (a) retain Great  
17 Collections to provide the grading, shipping and auction services, (b) modify the Disposition Plan to  
18 the extent it attributed a \$7.367 million value to the Error Coins, (c) authorize the Trustee to set a  
19 new "Opt-Out" deadline after the filing of a distribution schedule based on the graded values of the  
20 Error Coins, and (d) sell by auction coins not distributed by the Trustee, free and clear of all liens,  
21 claims and interests (collectively, "Interests").<sup>3</sup> The Trustee's motion was approved by Order of the  
22 Court dated October 12, 2016.<sup>4</sup>

23  
24 <sup>3</sup> Notice Of Motion And Motion For Order Authorizing The Trustee To (I) Retain GreatCollections.Com d/b/a Great  
25 Collections As Auctioneer, (II) Modify, In Part, Asset Distribution Plan, And (III) Set New Opt-Out Deadline For  
26 Creditors To Determine Whether To Receive Error Coins In Partial Payment Of Their Claims And Sell Coins Not  
Distributed To Creditors Free And Clear Of Liens, Claims And Interests; Memorandum Of Points And Authorities In  
Support Thereof; Declarations Of Weneta M.A. Kosmala And Ian Russell [Dkt. No. 623] (the "Distribution Modification  
Motion").

27 <sup>4</sup> See Order Authorizing the Trustee to (I) Retain GreatCollections.com d/b/a Great Collections as Auctioneer, (II)  
28 Modify, in Part, Asset Distribution Plan, and (III) Set New Opt-Out Deadline for Creditors to Determine Whether to  
Receive Error Coins in Partial Payment of Their Claims and Sell Coins Not Distributed to Creditors Free and Clear of  
Liens, Claims and Interests entered October 12, 2016 [Docket 634] (the "Distribution Modification Order").

**F. Grading of the Error Coins and Proposed Distribution Schedule.**

On or about April 24, 2017, PCGS completed its grading of the Error Coins and based upon the grades assigned, the Error Coins were ascribed values. PCGS graded 12,761 Presidential Error-Missing Edge Letter Coins and received 2,719 previously graded Error Coins. Great Collections also received from Heritage 658 presidential coins that are not considered Error Coins. In total, Great Collections is holding 16,238 coins, including 15,580 Error Coins which are now graded and encapsulated.

As set forth on **Exhibit "C"** hereto, the graded value of the 15,580 Error Coins is \$2,955,113. While this amount is approximately 40% of the value ascribed to the Error Coins by the Debtor's coin expert, it is almost six times the value estimated by Heritage. Based on the value of the Error Coins, and as set forth on the Distribution Schedule prepared by the Trustee's professionals, Victim/Creditors who determine to "opt-in" and receive Error Coins from the Estate will receive coins valued at between 18.73% and 18.77% of the amount of their claims.

By the Motion, the Trustee requests that the Court approve the PCGS valuation of the Error Coins.

**II.**

**THE ERROR COIN VALUATIONS, DISTRIBUTION SCHEDULE AND OPT-OUT  
PROCEDURES SHOULD BE APPROVED BY THE COURT**

The Disposition Order, entered January 28, 2106, authorized the Trustee to implement the Disposition Plan, providing for the sale of the Non-Error Coins and the distribution of Error Coins directly to Victim/Creditors on a pro rata basis utilizing the Debtor's coin expert's valuation to determine allocation amounts. The Distribution Modification Order, entered October 12, 2016, authorized modifications to the Disposition Plan based on a new valuation of the Error Coins being determined through the retention of Great Collections and PCGS, and authorized the Trustee to set a new deadline for Victim/Creditors to opt out of receiving a distribution of Error Coins at 30 days following the filing of this Motion to approve the Distribution Schedule. The foregoing actions of the Trustee were approved by this Court pursuant to Sections 105 and 363(b) of the Bankruptcy Code supported by the Trustee's business judgement.

1 This Motion is in furtherance of, and authorized by the prior orders of this Court. The  
2 Trustee requests that the Court approve the Error Coin valuations set forth on **Exhibit "A"** and the  
3 proposed allocation of Error Coins to Victim/Creditors on account of their claims, which is based on  
4 these valuations, as set forth on the Distribution Schedule appended hereto as **Exhibit "B"**, treat the  
5 Error Coin distributions as cash distributions in an amount equal to the value of the Error Coins  
6 listed on the PCGS valuations, approve the Opt-Out procedures and authorize the payment of Great  
7 Collections shipping costs, upon review of invoices by the Trustee, pursuant to the terms of its  
8 retention by the Estate.

9 **A. Approval of Valuation and Assignment of Cash Values**

10 The Error Coins were valued by PCGS, a highly regarded professional coin grading service  
11 whose expertise, credentials and coin grading process were described in depth in the Distribution  
12 Modification Motion approved by the Court. Each coin was separately examined and graded by a  
13 series of coin graders (two, at minimum and in most instances three or more grading experts), who  
14 enter independent grade determinations in a computer database until a consensus is reached and the  
15 final grade assigned. After the coins have been graded, the value of each graded coin is determined  
16 by reference to the PCGS Guide, consisting of the average dealer asking prices for PCGS-graded  
17 coins. The prices are compiled from various sources including dealer ads in trade papers, dealer  
18 fixed price lists and website offerings, significant auctions and activity at major coin shows. Dealer  
19 specialist and expert collectors provide pricing input as well. The PCGS grading of the Error Coins  
20 took place through the foregoing detailed process conducted over several months.

21 By this Motion, the Trustee requests that the Court (a) approve the values assigned to each of  
22 the Error Coins by PCGS in the amounts set forth on **Exhibit A** hereto, and (b) find that the PCGS  
23 valuation is reasonable based on all of the circumstances of this case.

24 The Error Coins are being distributed directly to Victim/Creditors in lieu of the proceeds of a  
25 sale of such Error Coins in order to maximize the value being distributed to Victim/Creditors, as  
26 described above and as authorized by the Disposition Order. The Trustee requests that the value of  
27 the Error Coins to be distributed to Victim/Creditors be deemed by the Court as a distribution of  
28 cash equal in amount to the value of the Error Coins received, based upon the PCGS values set forth

1 on **Exhibit “A”**. Further, the Trustee requests that the Court determine that the Error Coin  
2 distribution will reduce the claim amounts of Victim/Creditors by the amount of cash value allocated  
3 by PCGS to such Error Coins.

4 **B. Approval of Distribution Schedule**

5 In accordance with the procedures established by the Disposition Modification Order, and  
6 based on the grading and valuation provided by PCGS for Great Collections, the Trustee’s  
7 professionals have developed a Distribution Schedule, attached hereto as **Exhibit B**,<sup>5</sup> listing each  
8 claim and the specific Error Coins to be distributed to each Victim/Creditor on account thereof. As  
9 shown on the Distribution Schedule, each Victim/Creditor will receive a distribution of value equal  
10 to between 18.73% and 18.77% of the amount of his/her claim(s). The Trustee requests that the  
11 Court approve the proposed allocation of Error Coins to each Victim/Creditor as set forth on the  
12 Distribution Schedule (as filed under seal with the Court), subject to any supplemental and/or final  
13 Distribution Schedule filed with the Court (under seal) in this case.

14 **C. Opt Out Procedures**

15 In accordance with the opt-out procedures approved in the Disposition Modification Order,  
16 this Notice of Motion and Motion, the Distribution Schedule and the Individual Error Coin Notices  
17 (which include the Opt-Out Notices) provide each Victim/Creditor with information sufficient to  
18 allow them to make an informed decision whether they wish to “opt-out” and not receive their  
19 allocated Error Coins. By opting out, the specific Error Coins allocated to the opting-out  
20 Victim/Creditor will be auctioned (the “Rejected Coins”), and any proceeds obtained will be, *inter*  
21 *alia*, used to pay claims and case expenses in the order of the priorities established by the  
22 Bankruptcy Code.

23 Each Victim/Creditor will receive an Individual Error Coin Notice containing the Opt-Out  
24 Notice in the form of **Exhibit “C”** to the Motion. Victim/Creditors are requested to complete the  
25 Opt-Out Notices prior to the July 3, 2017, 2017 Opt-Out Deadline. In the Opt-Out Notices,

26  
27 <sup>5</sup> As discussed in the Notice of Motion, due to privacy concerns the Distribution Schedule has been drafted in such a way  
28 that each creditor is only identified by number and claim amount with the coins listed. A complete list of names,  
addresses and Error Coins for each Victim/Creditor was filed under seal with this Motion. However, each  
Victim/Creditor will receive the Individual Error Coin Notice, an individual private notice letting them know the specific  
Error Coins they will receive on account of their claims.

Victim/Creditors are to designate whether or not they wish to receive the Error Coins and are asked to provide updated addresses, if any, for the shipment of Error Coins. A stamped self-addressed return envelope for the mailing by Victim/Creditors of the Opt-Out Notices to the Trustee's professionals will be enclosed. Other parties in interest will receive a copy of the Motion and Notice of Motion only.

As set forth in the Notice of Motion and in the Opt-Out Notice, if a Victim/Creditor chooses to opt out of receiving Error Coins, the Trustee will sell the Error Coins that were otherwise distributable to such Victim/Creditor through an auction. The auction proceeds will be used to pay claims and expenses of this bankruptcy case in accordance with the priorities established by the Bankruptcy Code. Therefore, if a Victim/Creditor "opts-out" of receiving Error Coins, it is very possible that such Victim/Creditor will receive no distribution from the Debtor's Estate on account of his/her claim.

Pursuant to the Distribution Modification Order, the Court approved an opt-out deadline of thirty (30) days after the filing of this Motion for Victim/Creditors. The Trustee requests that the Court approve the Opt-Out Deadline set forth herein and approve the procedures set forth in this Motion including, without limitation, the Opt-Out Notice for Victim/Creditors to notify the Trustee of their decision to opt-out of receiving Error Coins. The Trustee also requests that the Court determine that the failure of any Victim/Creditor to timely return an Opt-Out Notice will be deemed to be an "opt-in" by default.

A supplemental Distribution Schedule, (to be filed under seal to protect the identities of the Victim/Creditors), shall be filed upon expiration of the Opt-Out Deadline. After the hearing on the Motion, and provided that the Court approves the Motion, the Trustee will file under seal a final Distribution Schedule identifying any additions or revisions to the supplemental Distribution Schedule either authorized by the Trustee, in her discretion, or as may be ordered by the Court at the hearing on the Motion.

**D. Distribution by Great Collections**

Provided the Court approves this Motion at the hearing hereon, Great Collections will ship coins to Victim/Creditors in accordance with the final Distribution Schedule. The Trustee requests

1 authorization to pay the shipping costs incurred by Great Collections pursuant to the terms of the  
2 Distribution Modification Order. Great Collections will auction the Rejected Coins and any  
3 remaining coins of the Debtor that were not sold at the Heritage Auction. The net proceeds of that  
4 auction will be used to pay case expenses in the priorities established by the Bankruptcy Code.

5 The Trustee believes that the approval of the PCGS coin valuation set forth on **Exhibit "A"**,  
6 approval of the allocation of specific Error Coins to specific Victim/Creditors as set forth on **Exhibit**  
7 **"B"**, the treatment of Error Coin distributions as a distribution of cash of an amount equal to the  
8 value of the Error Coins allocated to the Victim/Creditors, approval of the opt-out procedures and  
9 related relief requested herein are in the best interests of the Estate and will maximize the return to  
10 Victim/Creditors. Further, the proposed disposition of the Error Coins, based upon the PCGS  
11 valuations and in accordance with the allocations set forth in the Distribution Schedule, is consistent  
12 with the prior Orders of this Court approving the Coordination Agreement, which authorized the  
13 Estate to distribute to Victim/Creditors the assets of the Debtor seized by the Federal Government.  
14 The relief sought by this Motion is the culmination of the Coordination Agreement, the Disposition  
15 Plan (as modified by the Distribution Modification Order), developed in accordance with the  
16 Coordination Agreement, and implements the goal of those agreements and orders, which is to  
17 distribute value to Victim/Creditors.

18 **III.**

19 **CONCLUSION**

20 **WHEREFORE**, The Trustee respectfully requests that the Court approve the Motion and  
21 grant such other relief as is just and proper under the circumstances.

22 Dated: June 1, 2017

PACHULSKI STANG ZIEHL & JONES LLP

23  
24 By /s/ Linda F. Cantor  
Linda F. Cantor

25 Counsel for Weneta M.A. Kosmala, Chapter 7  
26 Trustee  
27  
28

**DECLARATION OF WENETA M.A. KOSMALA**

I, Weneta M.A. Kosmala, declare as follows:

1. I am the duly appointed chapter 7 trustee (the "Trustee") for the estate of The Tulving Company, Inc., debtor in the above-captioned case (the "Debtor"). I make this declaration ("Declaration") in support of the *Notice Of Motion And Motion For Order (I) Approving Coin Valuations And Distribution Schedule Of Error Coins To Victim/ Creditors, And (II) Granting Related Relief Pursuant To Sections 105 And 363 Of The Bankruptcy Code; Memorandum Of Points And Authorities In Support Thereof* (the "Motion"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

2. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or my opinion based on experience, knowledge, and information concerning the estate. If called upon, I can and will competently testify to the facts stated herein.

3. The Tulving Company, Inc. is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins and other precious metals through its internet website or by phone. Prior to the filing of the bankruptcy, customer complaints concerning delayed or undelivered orders were increasingly made to the Better Business Bureau against the Debtor and in early March, 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving, Jr., the Debtor's sole shareholder and principal in the United States District Court, Northern District of California. A criminal investigation of the Debtor and Tulving by the Government was also being pursued, as described below. The Debtor ceased operations on or about March 3, 2014.

4. The Debtor commenced this case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. In light of the pending criminal investigation and other ongoing litigation against the Debtor, on March 18, 2014, the United States Trustee filed a Stipulation Appointing Chapter 11 Trustee [Docket No. 15], which was signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee, appointing R. Todd Neilson



1 as Trustee of the Debtor's estate [Docket No. 22]. Thereafter upon notice and hearing, the case was  
2 converted to a chapter 7 and R. Todd Neilson was appointed to serve as the chapter 7 Trustee  
3 [Docket 108]. On March 22, 2016, Mr. Neilson filed his Withdrawal of Trustee [Docket 564]. The  
4 UST filed its Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as  
5 Trustee dated April 1, 2016 [Docket 566], appointing Weneta M. A. Kosmala as the successor  
6 chapter 7 trustee of the Debtor's estate.

7 5. On March 8, 2014, I am informed and believe that Special Agents of the United  
8 States Secret Service executed a Search Warrant on the Debtor's offices on probable cause that the  
9 Debtor and Hannes Tulving were engaged in fraud. The Search Warrant resulted in the seizure of  
10 the Debtor's property including rare coins and other valuable items. Criminal proceedings against  
11 the Debtor and Hannes Tulving ensued before the United States District Court for the Western  
12 District of North Carolina.

13 6. Hannes Tulving entered into a Plea Agreement with the United States of America, by  
14 and through the Acting United States Attorney for the Western District of North Carolina in the  
15 Criminal Case. Pursuant to order of this Court entered July 22, 2015 [Docket No. 264], Hannes  
16 Tulving was authorized to sign the Plea Agreement on behalf of the Debtor in the Criminal Case.  
17 Under the Plea Agreement, the Defendants each plead guilty to 18 U.S.C. § 1343 wire fraud charge  
18 as set forth in Count One of a Bill of Information in the Criminal Case and, among other things,  
19 agreed to pay restitution to the victims of fraud. The Coordination Order authorized Hannes Tulving  
20 to sign on behalf of the Debtor a "Coordination Agreement for Disbursement of Seized Items from  
21 United States to Bankruptcy Trustee and from Trustee to Victims. The Coordination Agreement  
22 also provided a framework for the administration by the Bankruptcy estate of the coins that had been  
23 seized by the Government. It required that the Trustee make a proposal for the disposition of the  
24 seized assets to Victim/Creditors which was acceptable to the Government and approved by the  
25 Bankruptcy Court and the District Court in the Criminal Case.

26 7. As required by the Coordination Agreement, the Trustee made a proposal for the  
27 disposition of the approximately 189,000 valuable coins that had been seized from the Debtor by the  
28 Government. The Disposition Plan was based upon the Debtor's inventory and valuation of the

1 Seized Coins. Under the Disposition Plan, approximately 176,477 of the Seized Coins believed to  
2 have a liquidation value in the range of \$400,000 - \$500,000, were to be sold at auction. Other  
3 Seized Coins, consisting of approximately 12,539 Presidential Error-Missing Edge Letter Coins, had  
4 been ascribed a value of \$7,367,235 by the Debtor's coin expert, Miles Standish. However, the  
5 Trustee was advised that an immediate sale of such a large number of Presidential Error-Missing  
6 Edge Letter Coins and other Double Edge Coins would flood the market and greatly reduce their  
7 value. The Disposition Plan therefore provided for the Error Coins to be distributed directly to  
8 Victim/Creditors on a pro rata basis, in partial satisfaction of their claims. Any Victim/Creditors  
9 could decide to "opt-out" of receiving Error Coins and the coins otherwise distributable to them  
10 would be sold at a later auction.

11 8. The Disposition Plan was accepted by the Government, approved by Order of the  
12 Bankruptcy Court dated January 28, 2016 [Dkt. No. 494] and approved by the District Court.  
13 Thereafter, Victim/Creditors were provided an opportunity to opt-out of receiving their allocated  
14 share of Error Coins. Thirty (30) of the Victim/Creditors advised the Trustee's professionals of their  
15 determination to opt-out of receiving Error Coins.

16 9. Thereafter, in accordance with the Disposition Plan and orders of the bankruptcy  
17 court, the Seized Coins were transferred from the federal depository in Wilmington, Delaware, to  
18 Heritage Auctioneers in Dallas, Texas, and the Non-Error Coins were sold at auction on June 10,  
19 2016. Consistent with estimates; the net proceeds of sale of the Non Error Coins amounted to  
20 \$385,314. (These amounts will be distributed pursuant to the priorities established by the  
21 Bankruptcy Code and in accordance with the Disposition Plan.) However, it was the opinion of  
22 Heritage that the Error Coins released by the Government and in its possession had an aggregate  
23 value of approximately \$500,000, and not \$7,367,235, as reported by the Debtor's coin expert.

24 10. As Trustee, I was unable to substantiate the vastly discrepant values allocated to the  
25 Error Coins by the Debtor's coin expert, Miles Standish, and by Heritage. (While Mr. Standish  
26 purportedly graded 12,539 Presidential Error-Missing Edge Letter Coins, only 2,800 of those coins  
27 were separately marked; the remaining coins were comingled after their review so that their  
28 individual values could not be determined. Mr. Standish refused to re-value the Error Coins.

Heritage proposed to grade and value the Error Coins but at a price of \$250,000, which was cost prohibitive.) Without individual values for the coins, there was no mechanism for my professionals to prepare a ratable allocation of the Error Coins on account of individual Victim/Creditor claims. Under the circumstances, the Disposition Plan with respect to the distribution of Error Coins being held by Heritage could not be implemented.

11. After conferring with other coin experts, in the exercise of my business judgment I determined to engage GreatCollections.com d/b/a Great Collections to have the Error Coins individually graded and encapsulated through Professional Coin Grading Service, a national coin grading service utilized by Great Collections in the ordinary course of business. In addition to the provision of grading services by PCGS at a discounted rate, Great Collections also agreed to transport the Error Coins from Dallas, Texas to Irvine, California, inventory the coins and ship the graded coins to Victim/Creditors at a total cost between \$110,250 and \$120,250, and auction coins not otherwise distributed.

12. Pursuant to a motion filed on September 1, 2016, as Trustee I requested authority to (a) retain Great Collections to provide the grading, shipping and auction services, (b) modify the Disposition Plan to the extent it attributed a \$7.367 million value to the Error Coins, (c) authorize the Trustee to set a new "Opt-Out" deadline after the filing of a distribution schedule based on the graded values of the Error Coins, and (d) sell by auction coins not distributed to Victim/Creditors, free and clear of all liens, claims and interests. That motion was approved by Order of the Court dated October 12, 2016.

13. On or about April 24, 2017, PCGS completed its grading of the Error Coins and based upon the grades assigned, the Error Coins were ascribed values. PCGS graded 12,761 Presidential Error-Missing Edge Letter Coins and received 2,719 previously graded Error Coins. Great Collections also received from Heritage 658 presidential coins that are not considered Error Coins. In total, Great Collections is holding 16,238 coins, including 15,580 Error Coins which are now graded and encapsulated.

14. As set forth on **Exhibit "A"** to the Motion, the graded value of the 15,580 Error Coins is \$2,955,113. While this amount is approximately 40% of the value ascribed to the Error

1 Coins by the Debtor's coin expert, it is almost six times the value estimated by Heritage. Based on  
2 the value of the Error Coins, and as set forth on the Distribution Schedule prepared by the my  
3 professionals, Victim/Creditors who determine to "opt-in" and receive Error Coins from the Estate  
4 will receive coins valued at between 18.73% and 18.77% of the amount of their claims.

5 15. By the Motion, as Trustee I am requesting that the Court approve the PCGS valuation  
6 of the Error Coins.

7 16. The Disposition Order, entered January 28, 2106, authorized me, as Trustee, to  
8 implement the Disposition Plan, providing for the sale of the Non-Error Coins and the distribution of  
9 Error Coins directly to Victim/Creditors on a pro rata basis utilizing the Debtor's coin expert's  
10 valuation to determine allocation amounts. The Distribution Modification Order, entered October  
11 12, 2016, authorized modifications to the Disposition Plan based on a new valuation of the Error  
12 Coins being determined through the retention of Great Collections and PCGS, and authorized me to  
13 set a new deadline for Victim/Creditors to opt out of receiving a distribution of Error Coins at 30  
14 days following the filing of this Motion to approve the Distribution Schedule. The foregoing actions  
15 were approved by this Court pursuant to Sections 105 and 363(b) of the Bankruptcy Code supported  
16 by my business judgement.

17 17. This Motion is in furtherance of, and authorized by the prior orders of this Court. I  
18 request that the Court approve the Error Coin valuations set forth on **Exhibit "A"** to the Motion and  
19 the proposed allocation of Error Coins to Victim/Creditors on account of their claims, which is based  
20 on these valuations, as set forth on the Distribution Schedule appended to the Motion as **Exhibit**  
21 **"B"**, treat the Error Coin distributions as cash distributions in an amount equal to the value of the  
22 Error Coins listed on the PCGS valuations, approve the Opt-Out procedures and authorize the  
23 payment of Great Collections shipping costs, upon my review of their invoices, pursuant to the terms  
24 of their retention by the Estate.

25 18. The Error Coins were valued by PCGS, a highly regarded professional coin grading  
26 service whose expertise, credentials and coin grading process were described in depth in the  
27 Distribution Modification Motion approved by the Court. As set forth in the Distribution  
28 Modification Motion and as represented in the PCGS website, at PCGS each coin is separately

1 examined and graded by a series of coin graders (two, at minimum and in most instances three or  
2 more grading experts), who enter independent grade determinations in a computer database until a  
3 consensus is reached and the final grade assigned. After the coins have been graded, the value of  
4 each graded coin is determined by reference to the PCGS Guide, consisting of the average dealer  
5 asking prices for PCGS-graded coins. The prices are compiled from various sources including  
6 dealer ads in trade papers, dealer fixed price lists and website offerings, significant auctions and  
7 activity at major coin shows. Dealer specialist and expert collectors provide pricing input as well. I  
8 am informed and believe that the PCGS grading of the Error Coins took place through the foregoing  
9 detailed process conducted over several months.

10 19. By this Motion, as Trustee I request that the Court (a) approve the values assigned to  
11 each of the Error Coins by PCGS in the amounts set forth on **Exhibit "A"** to the Motion, and (b)  
12 find that the PCGS valuation is reasonable based on all of the circumstances of this case.

13 20. The Error Coins are being distributed directly to Victim/Creditors in lieu of the  
14 proceeds of a sale of such Error Coins in order to maximize the value being distributed to  
15 Victim/Creditors, as described above and as authorized by the Disposition Order. As Trustee, I  
16 request that the value of the Error Coins to be distributed to Victim/Creditors be deemed by the  
17 Court as a distribution of cash equal in amount to the value of the Error Coins received, based upon  
18 the PCGS values set forth on **Exhibit "A"**. Further, as Trustee I request that the Court determine  
19 that the Error Coin distribution will reduce the claim amounts of Victim/Creditors by the amount of  
20 cash value allocated by PCGS to such Error Coins.

21 21. In accordance with the procedures established by the Disposition Modification Order,  
22 and based on the grading and valuation provided by PCGS for Great Collections, my professionals  
23 have developed a Distribution Schedule, attached to the Motion as **Exhibit "B"**, listing each claim  
24 and the specific Error Coins to be distributed to each Victim/Creditor on account thereof. As shown  
25 on the Distribution Schedule, each Victim/Creditor will receive a distribution of value equal to  
26 between 18.73% and 18.77% of the amount of his/her claim(s). As Trustee I request that the Court  
27 approve the proposed allocation of Error Coins to each Victim/Creditor as set forth on the  
28

1 Distribution Schedule (as filed under seal with the Court), subject to any supplemental and/or final  
2 Distribution Schedule filed with the Court (under seal) in this case.

3 22. In accordance with the opt-out procedures approved in the Disposition Modification  
4 Order, this Notice of Motion and Motion, the Distribution Schedule and the Individual Error Coin  
5 Notices (containing the Opt-Out Notice) provide each Victim/Creditor with information sufficient to  
6 allow them to make an informed decision whether they wish to "opt-out" and not receive their  
7 allocated Error Coins. By opting out, the specific Error Coins allocated to the opting-out  
8 Victim/Creditor will be auctioned, and any proceeds obtained will be, inter alia, used to pay claims  
9 and case expenses in the order of the priorities established by the Bankruptcy Code.

10 23. Each Victim/Creditor will receive an Opt-Out Notice in the form of **Exhibit "C"** to  
11 the Motion. Victim/Creditors are requested to complete the Opt-Out Notices prior to the July 3,  
12 2017 Opt-Out Deadline. In the Opt-Out Notices, Victim/Creditors are to designate whether or not  
13 they wish to receive the Error Coins and are asked to provide updated addresses, if any, for the  
14 shipment of Error Coins. A stamped self-addressed return envelope for the mailing by  
15 Victim/Creditors of the Opt-Out Notices to my professionals will be enclosed. Other parties in  
16 interest will receive a copy of the Motion and Notice of Motion only.

17 24. As set forth in the Notice of Motion and in the Opt-Out Notice, if a Victim/Creditor  
18 chooses to opt out of receiving Error Coins, I will cause the sale of the Error Coins that were  
19 otherwise distributable to such Victim/Creditor through an auction. The auction proceeds will be  
20 used to pay claims and expenses of this bankruptcy case in accordance with the priorities established  
21 by the Bankruptcy Code. Therefore, if a Victim/Creditor "opts-out" of receiving Error Coins, it is  
22 very possible that such Victim/Creditor will receive no distribution from the Debtor's Estate on  
23 account of his/her claim.

24 25. Pursuant to the Distribution Modification Order, the Court approved an opt-out  
25 deadline of thirty (30) days after the filing of this Motion for Victim/Creditors. As Trustee, I request  
26 that the Court approve the Opt-Out Deadline set forth herein and approve the procedures set forth in  
27 this Motion including, without limitation, the Opt-Out Notice for Victim/Creditors to notify my  
28 professionals of their decision to opt-out of receiving Error Coins. As Trustee I also request that the

1 Court determine that the failure of any Victim/Creditor to timely return an Opt-Out Notice will be  
2 deemed to be an "opt-in" by default.

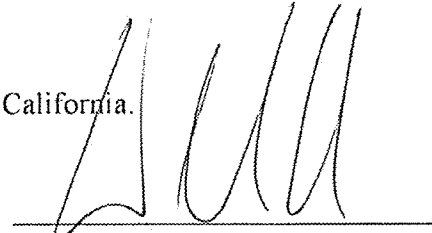
3 26. A supplemental Distribution Schedule, (to be filed under seal to protect the identities  
4 of the Victim/Creditors), shall be filed upon expiration of the Opt-Out Deadline. After the hearing  
5 on the Motion, and provided that the Court approves the Motion, I will cause to be filed under seal a  
6 final Distribution Schedule identifying any additions or revisions to the supplemental Distribution  
7 Schedule either authorized by me, as Trustee, in my discretion, or as may be ordered by the Court at  
8 the hearing on the Motion.

9 27. Provided the Court approves this Motion at the hearing hereon, Great Collections will  
10 ship coins to Victim/Creditors in accordance with the final Distribution Schedule. As Trustee I  
11 request authorization to pay the shipping costs incurred by Great Collections pursuant to the terms of  
12 the Distribution Modification Order. Great Collections will auction the Rejected Coins and any  
13 remaining coins of the Debtor that were not sold at the Heritage Auction. The net proceeds of that  
14 auction will be used to pay case expenses in the priorities established by the Bankruptcy Code.

15 28. In the exercise of my business judgment as Trustee, I believe that the approval of the  
16 PCGS coin valuation set forth on **Exhibit "A"**, approval of the allocation of specific Error Coins to  
17 specific Victim/Creditors as set forth on **Exhibit "B"**, the treatment of Error Coin distributions as a  
18 distribution of cash of an amount equal to the value of the Error Coins allocated to the  
19 Victim/Creditors, approval of the opt-out procedures and related relief requested herein, are in the  
20 best interests of the Estate and will maximize the return to Victim/Creditors. Further, the proposed  
21 disposition of the Error Coins, based upon the PCGS valuations and in accordance with the  
22 allocations set forth in the Distribution Schedule, is consistent with the prior Orders of this Court  
23 approving the Coordination Agreement, which authorized the Estate to distribute to Victim/Creditors  
24 the assets of the Debtor seized by the Federal Government. The relief sought by this Motion is the  
25 culmination of the Coordination Agreement, the Disposition Plan (as modified by the Distribution  
26 Modification Order), developed in accordance with the Coordination Agreement, and implements  
27 the goal of those agreements and orders, which is to distribute value to Victim/Creditors.  
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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

3 Executed this 12<sup>th</sup> day of June 2017, at Santa Ana, California.

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Weneta M. A. Kosmala



**DECLARATION OF DAVID JUDD**

I, David H. Judd, declare and state as follows:

1. This declaration is submitted in support of the *Notice Of Motion And Motion For Order (I) Approving Coin Valuations And Distribution Schedule Of Error Coins To Victim/ Creditors, And (II) Granting Related Relief Pursuant To Sections 105 And 363 Of The Bankruptcy Code; Memorandum Of Points And Authorities In Support Thereof* (the "Motion"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

2. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or my opinion based on experience, knowledge, and information concerning the estate. If called upon, I can and will competently testify to the facts stated herein.

3. I am a Director of Berkeley Research Group, LLC ("BRG"). By order entered May 29, 2014 [Dkt. No. 105], the Bankruptcy Court approved the employment of BRG as accountants and financial advisors for R. Todd Neilson, the chapter 11 trustee for the bankruptcy estate of The Tulving Company, Inc. After conversion of this case to a case under chapter 7 of the Bankruptcy Code, by order entered July 15, 2014 [Dkt. No. 151], the Bankruptcy Court approved the employment of BRG as financial advisors to R. Tod Neilson, as chapter 7 trustee for the Debtor's bankruptcy estate. Subsequently, by Order entered July 20, 2016 [Dkt. No. 609], BRG was retained as financial advisors to Weneta M.A. Kosmala, the successor trustee to R. Todd Neilson appointed in this case effective April 1, 2016. The Bankruptcy Court has approved the employment of BRG to provide a variety of accounting and financial related services in connection with the Debtor's bankruptcy case.

4. As part of the accounting and financial related services for the trustee BRG has provided in connection with the bankruptcy case, I have been responsible for reviewing and analyzing Debtor's accounting and other financial records since the appointment of the chapter 11 trustee of Debtor's estate. In order to perform those functions, I, together with other professionals within BRG, have reviewed and become familiar with, among other things, claims asserted by Victim/Creditors against the Debtor's estate. I am also familiar with the final Victim/Creditors list

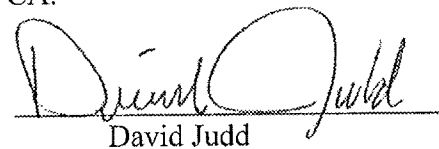
1 submitted to the Bankruptcy Court and the District Court in the Criminal Case in accordance with  
2 the *Order for Coordination Agreement for Distribution of Seized Items from United States to*  
3 *Bankruptcy Trustee and from Trustee to Victims* [Dkt. No. 580] (the "Victim/Creditor List"). The  
4 Victim/Creditor List was approved by the Trustee and the Government and lists the final allowed  
5 claim amount for each Victim/Creditor entitled to restitution under the Coordination Order approved  
6 by Order of this Court dated July 22, 2015 [Dkt. No. 264].

7 5. I have carefully reviewed the Error Coin valuations prepared by PCGS, a copy of  
8 which is appended to the Motion as **Exhibit "A"**. Based on those values and at the direction of the  
9 Trustee, I determined unilaterally how to allocate the Error Coins to Victim/Creditors based upon the  
10 claim amounts set forth on the Victim/Creditor List to reach a pro rata equal distribution of Error  
11 Coins as uniform as possible given the varying valuations of the Error Coins. The resulting  
12 allocation of Error Coins to Victim/Creditors is set forth on the Distribution Schedule appended to  
13 the Motion as **Exhibit "B"**.

14 6. As shown on **Exhibit "B"**, each Victim/Creditor is proposed to receive a distribution  
15 of Error Coins equal in value to between 18.73% and 18.77% of the amount of his/her claim(s).  
16 Based upon my calculations, the proposed distributions set forth on the Distribution Schedule come  
17 as close as practicable to an equal distribution of value of Error Coins to all Victim/Creditors.

18  
19 I declare under penalty of perjury under the laws of the United States that the foregoing is  
20 true and correct.

21 Executed this 1<sup>st</sup> day of June 2017, at Los Angeles, CA.

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23   
24 David Judd